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Attorneys for Plaintiffs
KENNETH KLUTH and STEPHEN SCHENK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON – SEATTLE DIVISION

KENNETH KLUTH, and STEPHEN
SCHENK,

Plaintiffs,

vs.

SANTANDER CONSUMER USA
INC., and AUTO TRACKERS AND
RECOVERY NORTH, LLC,

Defendants.

Case No: 2:17-CV-0414

COMPLAINT FOR:

**(1) VIOLATIONS OF THE FAIR
DEBT COLLECTION PRACTICES
ACT**

**(2) VIOLATIONS OF THE
UNIFORM COMMERCIAL CODE**

**(3) VIOLATIONS OF THE
WASHINGTON CONSUMER
PROTECTION ACT**

1 Plaintiffs Kenneth Kluth and Stephen Schenk hereby complain against
2 defendants Santander Consumer USA Inc. (“Santander”), and Auto Trackers and
3 Recovery North, LLC (“Auto Trackers”), and allege on information and belief as
4 follows:

5 **OPERATIVE FACTS**

6 1. On or about April 19, 2016, plaintiffs purchased a Ford F150 truck,
7 primarily for personal, family or household use, and financed the purchase price by
8 taking out a loan from defendant Santander. Santander claims it took a security
9 interest in the vehicle. Plaintiffs subsequently fell behind on their contract, and
10 were in contact with Santander to arrange deferred payments which would bring
11 them current on their loan, when Santander hired Par, Inc., in Indianapolis, Indiana,
12 to repossess plaintiff’s vehicle. Par then hired defendant Auto Trackers to recover
13 the vehicle.

14 2. Defendants breached the peace, in violation of Uniform Commercial
15 Code, RCW § 62A.9A-609(b)(2), in repossessing plaintiffs’ vehicle. On or about
16 January 17, 2017, Auto Trackers arrived at plaintiffs’ residence. Plaintiff Kluth
17 objected to any repossession, and entered the truck to stop the attempt. Auto
18 Trackers ignored plaintiff’s objections. As Kluth began to drive away, Auto
19 Trackers slammed its tow truck into the back of plaintiffs’ truck, injuring Kluth’s
20 neck as he was snapped forward. Kluth had just had surgery on his neck, and Auto
21 Tracker’s criminal battery exacerbated his existing injury and caused him great
22 physical pain.

23 3. After slamming into plaintiffs’ vehicle, Auto Trackers jacked up the
24 vehicle into the air, with plaintiff Kluth still inside. Auto Trackers’ driver ordered
25 Kluth to leave the vehicle, and Kluth refused. Auto Trackers’ driver refused to
26 show plaintiffs any authorization to repossess, or to give them a business card. He
27 falsely told plaintiffs that he would call the police, that they were concealing the
28 vehicle, and that they would go to jail if they did not give up the truck. Kluth told

1 the driver he was not leaving the vehicle, and to go ahead and call the police. Auto
2 Trackers' driver became enraged, came around to the open door of the truck, and
3 took a swing at Kluth.

4 4. Afraid of further violence, and with Kluth needing to treat his injured
5 neck, plaintiffs gave up possession of the vehicle.

6 5. After repossession, defendant Santander mailed a joint notice of sale to
7 both plaintiffs, instead of two separate notices as required by the Uniform
8 Commercial Code. Plaintiffs are informed and believe that Santander has sold
9 plaintiffs' vehicle. Santander failed to issue any accounting of the deficiency
10 balance or surplus to plaintiffs, as required by the UCC.

11 **JURISDICTION AND VENUE**

12 6. The court has original jurisdiction over this matter pursuant to 15
13 U.S.C. § 1692k(d). The court has supplemental jurisdiction over the state law
14 claims pursuant to 28 U.S.C. § 1367.

15 7. Venue is proper in the Western District of Washington because
16 defendants do business in King County, Seattle, Washington, in this district, and
17 are subject to the court's personal jurisdiction in this district.

18 **PARTIES**

19 8. Plaintiffs are natural persons over the age of 18 years and are residents
20 of the state of Washington.

21 9. Defendant Santander Consumer USA Inc. is an Illinois corporation
22 with its headquarters in Dallas, Texas, and doing business in King County,
23 Washington.

24 10. Defendant Auto Trackers and Recovery North, LLC is an Idaho
25 limited liability company located in Hayden, Idaho, and doing business in King
26 County, Washington.

27 11. At all times mentioned herein, each defendant was the agent or
28 employee of each of the other defendants and was acting within the course and

1 scope of such agency or employment. The defendants are jointly and severally
2 liable to plaintiffs.

3 **FIRST CAUSE OF ACTION**
4 **(Against Defendant Auto Trackers for Violations of the Fair Debt Collection**
5 **Practices Act, 15 U.S.C. § 1692 et seq.).**

6 12. Plaintiffs reallege and incorporate herein by reference the allegations
7 of all paragraphs above.

8 13. Plaintiffs are “consumers” who allegedly owed a “debt”, and
9 defendants are “debt collectors”, as those terms are defined at 15 U.S.C. § 1692a.
10 Defendants use instrumentalities of interstate commerce or the mails in a business
11 the principal purpose of which is the enforcement of security interests.

12 14. Defendants violated 15 U.S.C. § 1692f(6) by taking nonjudicial action
13 to effect dispossession or disablement of property when (1) there was no present
14 right to possession of the property claimed as collateral through an enforceable
15 security interest; and/or (2) the property was exempt by law from such
16 dispossession or disablement.

17 15. Defendants had no present right to repossess plaintiffs’ vehicle in
18 breach of the peace, but did so or attempted to do so, in violation of RCW §
19 62A.9A-609(b)(2).

20 16. Plaintiffs are entitled to actual damages sustained as a result of
21 defendants’ conduct, in an amount according to proof, pursuant to 15 U.S.C. §
22 1692k.

23 17. Plaintiffs are entitled to statutory damages of \$1,000 each, against each
24 defendant, pursuant to 15 U.S.C. § 1692k. Defendants have frequently and
25 persistently failed to comply with the FDCPA, and have violated the FDCPA
26 intentionally. The nature of defendants’ violations justifies the maximum statutory
27 damages award available.

28 18. Plaintiffs are entitled to the costs of the action, together with a
reasonable attorneys fee, pursuant to 15 U.S.C. § 1692k.

1 WHEREFORE, plaintiffs pray for relief as set forth below.

2 **SECOND CAUSE OF ACTION**
3 **(Against Defendant Santander for Violations of the Uniform Commercial**
4 **Code, RCW §§ 62A.9A-609 and 62A.9A-625)**

5 19. Plaintiffs reallege and incorporate herein by reference the allegations
6 of all paragraphs above.

7 20. Defendants violated RCW § 62A.9A-609(b)(2) by repossessing
8 plaintiffs' vehicle in breach of the peace.

9 21. Defendants violated RCW § 62A.9A-611(b) and 62A.9A-614 by
10 failing to send a reasonable authenticated notification of disposition to plaintiff
11 Schenk.

12 22. Defendants violated RCW § 62A.9A-616 by failing to send written
13 explanations of the deficiency balance or surplus to plaintiffs, after selling their
14 vehicle.

15 23. Plaintiffs are entitled to recover their actual damages caused by
16 defendants' failure to comply with the Uniform Commercial Code, pursuant to
17 RCW 62A.9A-625(b) and (c)(1).

18 24. Plaintiffs are entitled to recover the credit service charge plus ten
19 percent of the principal amount of the obligation, pursuant to RCW 62A.9A-
20 625(c)(2).

21 25. Plaintiffs are entitled to recover attorneys fees and costs pursuant to
22 the terms of the retail installment sales contract, and applicable law.

23 WHEREFORE, plaintiffs pray for relief as set forth below.

24 **THIRD CAUSE OF ACTION**
25 **(Against All Defendants For Violations Of The Washington Consumer**
26 **Protection Act, RCW § 19.86.910 et seq)**

27 26. Plaintiff realleges and incorporates herein by reference the allegations
28 of all paragraphs above.

27 27. Defendants committed unfair methods of competition and/or unfair or

1 deceptive acts or practices, in the conduct of any trade or commerce, and therefore
2 violated RCW § 19.86.020.

3 28. Defendants' acts were injurious to the public interest within the
4 meaning of RCW 19.86.093.

5 29. Plaintiffs were injured in their business or property by defendants'
6 violations of RCW 19.86.020, and are therefore entitled to injunctive relief, actual
7 damages, and attorneys fees and costs, pursuant to RCW § 19.86.090.

8 30. In addition to actual damages, plaintiffs are entitled to treble damages
9 not exceeding \$25,000, pursuant to RCW § 19.86.090.

10 31. Plaintiffs are entitled to a civil penalty of \$2,000 for each of
11 defendants' violations of RCW § 19.86.020, pursuant to RCW § 19.86.140.

12 WHEREFORE, plaintiffs pray for relief as set forth below.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, plaintiff prays for the following relief:

- 15 1. For actual damages;
 - 16 2. For statutory damages;
 - 17 3. For civil penalties;
 - 18 4. For treble damages;
 - 19 5. For injunctive relief and a temporary restraining order;
 - 20 6. For pre-judgment interest to the extent permitted by law;
 - 21 7. For an award of attorneys' fees, costs and expenses incurred in the
22 investigation, filing and prosecution of this action; and
 - 23 8. For such other and further relief as the Court may deem just and proper.
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury under the United States and Washington constitutions.

Dated: March 16, 2017

Respectfully Submitted,
TRUEBLOOD LAW FIRM

By: /s/
Alexander B. Trueblood

Attorneys for Plaintiffs
KENNETH KLUTH and STEPHEN
SCHENK